

2012 FEB 10 PM 1:17

CLERK  
BY PM  
DEPUTY CLERK

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

KENNETH BARBER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 5:10-cv-255
	)	
ANDREW PALLITO,	)	
Commissioner, Vermont	)	
Department of Corrections,	)	
	)	
Defendant.	)	

**OPINION AND ORDER ADOPTING MAGISTRATE JUDGE'S**  
**REPORT AND RECOMMENDATION**  
(Docs. 20 & 21)

This matter came before the court for a review of the Magistrate Judge's December 29, 2011 Report and Recommendation ("R & R") in the above-captioned matter (Doc. 21). Neither party has objected to the R & R, and the deadline for doing so has expired. Plaintiff, Kenneth Barber, is represented by T. Lamar Enzor, Esq. Defendant, Andrew Pallito, Commissioner of the Vermont Department of Corrections, is represented by William A. MacIlwaine, Esq. and Samuel Hoar, Jr., Esq.

A district judge must make a *de novo* determination of those portions of a magistrate judge's report and recommendation to which an objection is made. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1); *Cullen v. United States*, 194 F.3d 401, 405 (2d Cir. 1999). The district judge may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. § 636(b)(1); *accord Cullen*, 194 F.3d at 405. A district judge, however, is not required to review the factual or legal conclusions of the magistrate judge as to those portions of a report and recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140,

150 (1985). When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. *See Campbell v. United States Dist. Court*, 501 F.2d 196, 206 (9th Cir. 1974), *cert. denied*, 419 U.S. 879 (1974).

In his fourteen page R & R, the Magistrate Judge carefully reviewed the factual record and recommended that Defendant's motion for summary judgment (Doc. 20) be granted and the case be dismissed. Defendant's motion for summary judgment was unopposed.

The court agrees with the Magistrate Judge's conclusion and hereby ADOPTS the R & R as the Opinion and Order of this court. The court GRANTS Defendant's motion for summary judgment (Doc. 20) and hereby ORDERS that this case be DISMISSED. SO ORDERED.

Dated at Rutland, in the District of Vermont, this 10<sup>th</sup> day of February, 2012.

**/s/ Christina Reiss**

---

Christina Reiss, Chief Judge  
United States District Court